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No. 86-1855

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

DELTA AIR LINES, INC., and
WESTERN AIR LINES, INC.,

Petitioners,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AIRLINES DIVISION, and LOCAL UNION NO. 2707, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, and LOCAL UNION NO. 2747, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, and AIR TRANSPORT EMPLOYEES,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT AIR TRANSPORT EMPLOYEES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Whether, under the Railway Labor Act, the federal courts have jurisdiction to enforce a successorship clause in a collective bargaining agreement against a contracting party?

2. Whether, under the Railway Labor Act, a carrier may be required to arbitrate a dispute over the meaning and effect of a successor clause which it has bargained for and agreed to include in its collective bargaining agreement?

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Respondents.

BRIEF OF RESPONDENT AIR TRANSPORT EMPLOYEES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Air Transport Employees opposes the petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit issued in this case on April 1, 1987.

STATEMENT OF THE CASE

Respondent Air Transport Employees ("ATE") represented the craft or class of office, clerical, fleet and passenger service employees at Western Air Lines ("Western"). In 1982 Western asked the ATE for millions of dollars in wage concessions as a response to its severe economic problems. At the same time, due to the precarious economic situation at Western, and in the entire airline industry, ATE sought to obtain additional forms of job security for its members. As a result, in 1982, in exchange for substantial wage concessions, Western agreed to amend the collective bargaining agreement between ATE and Western to include a successorship provision (Section 2(c) and (d) of the Agreement) which bound successors, broadly defined, of Western to apply the collective bargaining agreement to former Western employees after a merger or acquisition. Western agreed to that successorship provision without raising any doubts as to its legality under federal labor law.

On September 9, 1986, Western was purchased by Delta Air Lines, Inc. ("Delta"). The merger of Western and Delta was to take place in two stages. The first was the purchase of stock by Delta, with the maintenance of Western as an independent subsidiary. The second was the operational merger of Western with Delta and the extinguishment of Western as an independent entity. That was scheduled to take place on April 1, 1987.

On November 6, 1986 the ATE filed a grievance with Western alleging a violation of the successorship provision by Western's agreeing to merge with Delta without first obtaining an agreement from Delta to be bound to the terms of the collective bargaining agreement. When Western refused to process the grievance, ATE immediately filed suit in District Court in which it requested that

the District Court find the grievance arbitrable and order Western to arbitrate.

The District Court dismissed ATE's Complaint for lack of jurisdiction, holding that the dispute involved representational matters within the exclusive jurisdiction of the National Mediation Board. (Pet. App. F-1) The ATE immediately appealed and moved for an emergency injunction pending appeal which would have the parties select an arbitrator and schedule an arbitration while the merits were being determined by the Court of Appeals. This motion was granted on March 17, 1987. (Pet. App. D-1) In addition, the Ninth Circuit ordered this case consolidated with *International Brotherhood of Teamsters v. Western Air Lines, et al.*

Western's motion to expedite the appeal, not opposed by the ATE, and the similar motion of the International Brotherhood of Teamsters in the consolidated case, were granted. The ATE then requested that the Court of Appeals, if it found that the dispute over the successorship clause was arbitrable, issue an order enjoining the operational merger of Western and Delta in order to preserve the arbitration tribunal's jurisdiction.

On March 31, 1987 the Court of Appeals reversed the judgment of the District Court and instructed the District Court to enter orders compelling arbitration of the successorship grievance dispute arising under the collective bargaining agreement. In order to preserve the arbitration tribunal's jurisdiction to issue an effective remedy, the Ninth Circuit also enjoined the contemplated merger of Western and Delta pending completion of arbitration proceedings that were scheduled to commence on April 6, 1987 or until Western and Delta agreed "that the result of the arbitration, subject to appropriate judicial review and all valid defenses, would bind the successor corporation." (Pet. App. B-2)

On April 1, 1987, the Ninth Circuit issued its opinion setting forth the reasons for its order. (Pet. App. A-1) In holding that the successorship clause dispute was subject to the mandatory arbitration provisions of the Railway Labor Act ("RLA"), the Court of Appeals stated:

> The unions are not seeking either by this action or by arbitration to obtain recognition by Western of their status as the collective bargaining representatives of Western's employees; the unions already have such recognition. Similarly, the unions are not seeking a determination that they are the collective bargaining representatives of Delta employees. The arbitration is not likely to make a determination that any union or unions will become the representative of Delta employees, given the scope of jurisdiction of the System Adjustment Board. *See* 45 U.S.C. § 184. Instead, the unions seek a determination that Western breached its agreement by agreeing to a merger with an airline that did not agree to voluntarily recognize the unions. Thus, strictly speaking, the actions by these unions are not for resolution of "representation" disputes, but are merely claims that Western has breached its contract.

(Pet. App. A-7)

Just hours after the Ninth Circuit's Order of March 31, 1987, Western and Delta filed an Emergency Application For Stay and For Vacation of Injunction with Associate Justice Sandra Day O'Connor as Circuit Justice for the Ninth Circuit. Before any opposition could be filed by the ATE, Associate Justice O'Connor granted the stay and vacated the Ninth Circuit's injunction.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I. THE COURT OF APPEALS' DECISION IS NOT IN CONFLICT WITH ANY DECISIONS OF THIS COURT OR OF THE COURTS OF APPEAL

Rule 17 of the Rules of the United States Supreme Court provides: "A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." Rule 17 further provides for the type of questions reviewable by the Court pursuant to a Petition for Writ of Certiorari: conflicts between circuits, between Courts of Appeal and state courts of last resort, and conflicts between lower courts and the decisions, or prospective decisions, of this Court.

Petitioners argue that the writ herein should be granted because the decision of the Ninth Circuit Court of Appeals compelling Western to arbitrate the successorship clause dispute is in conflict with decisions of other circuit courts and with decisions of this Court interpreting the Railway Labor Act. Yet, as explained below, there is no such conflict.

This Court has long recognized the principle that a successorship clause is enforceable against the contracting party that agreed to it.[1] In *Howard Johnson's v. Hotel Employees*, 417 U.S. 249 (1974), this Court, in an 8-1 decision, decided that while under certain circumstances it might be proper to proceed directly against a successor employer, a union has an alternative "realistic" remedy to enforce an alleged breach of a successor

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[1] This Court has also recognized that such a clause gives certain rights against a successor employer. *See, Wiley and Sons v. Livingston*, 376 U.S. 543 (1964).

clause against the promisor. Indeed, this Court explicitly recognized that the Union in the case before it might have done well to proceed just as the ATE did here:

> The Union apparently did not explore another remedy which might have been available to it prior to the sale, *i.e.*, moving to enjoin the sale to Howard Johnson on the ground that this was a breach by the Grissoms of the successorship clauses in the collective bargaining agreements. *See National Maritime Union v. Commerce Tankers Corp.*, 325 F.Supp. 360 (S.D.N.Y. 1971), vacated 457 F.2d 1127 (CA 2, 1972). The mere existence of the successorship clauses in the bargaining agreements between the Union and the Grissom's, however, cannot bind Howard Johnson either to the substantive terms of the agreements or to the arbitration clauses thereof, absent the continuity required by Wiley, when it is perfectly clear the company refused to assume any obligations under the agreements.

417 U.S. at 258, N.3.

The ability to bind the promisor to its contractual successorship promise is of course rooted in traditional notions of common law contract; but is grounded as well in fundamental principles of federal labor law.

In *Wiley and Sons v. Livingston*, 376 U.S. 543, (1964) this Court observed that while "(e)mployees, and the union which represents them, ordinarily do not take part in negotiations leading to a change in corporate ownership . . ."

> [t]he objectives of national labor policy, reflected in established principles of federal law, *require* that the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced

> by some protection to the employees from a sudden change in the employment relationship. *The transition from one corporate organization to another will in most cases be eased and industrial strife avoided if employees' claims continue to be resolved by arbitration rather than by "the relative strength . . . of the contending forces."*

376 U.S. at 549, quoting *United Steel Workers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960) (emphasis added).

This basic labor law policy has generated practical applications by numerous courts which have consistently upheld the validity of successorship clauses and issued injunctions to preserve the status quo pending *arbitration* of the contractual successorship disputes *Local Executive Board v. Royal Center, Inc.*, 796 F.2d 1159 (9th Cir. 1986) *cert. denied*, 107 S.Ct. 881, (1987); *Nursing Home and Hospital Union v. Sky View Terrace*, 759 F.2d 1094 (3rd Cir. 1985); *Local Lodge No. 1266 v. Panoramic Corp.*, 669 F.2d 276 (7th Cir. 1981); *see also, Teamsters Local 71 v. Akers Motors Lines, Inc.*, 582 F.2d 1336 (4th Cir. 1978), *cert. denied*, 440 U.S. 929, (1979) (partial liquidation of business enjoined pending arbitration).

Following these well established guideposts, the ATE negotiated such a clause with Western. The ATE and the 5700 employees it represents not only relied upon the clause and Western's contractual promise to comply with its provisions, but paid millions of dollars in concessions for such a guarantee.

Despite these undisputed facts and the well-established federal labor policy articulated in *Howard Johnson's*, *Wiley*, and the additional cases discusssed above, Western and Delta claim that the Ninth Circuit's decision and injunction are in conflict with decisions of the several Courts of Appeal. (Pet. p. 12) However, the cases relied

upon by Western and Delta, as the court below pointed out:

> generally involve an attempt by a union *after a merger* has taken effect to force a successor employer to be bound by a collective bargaining agreement entered into by the union and predecessor employer.

(Pet. App. A-7, emphasis added) citing *IBT v. Texas International Airlines*, 717 F.2d 157, 158 (5th Cir. 1983); *IAM v. Northeast Airlines, Inc.*, 536 F.2d 975, 976 (1st Cir.), *cert. denied*, 429 U.S. 961 (1976); *Air Line Pilots Association v. Texas International Airlines, Inc.*, 656 F.2d 16, 17-18 (2nd Cir. 1981).

The primary case relied on by Western, *ALEA v. Republic Air Lines*, 798 F.2d 767 (7th Cir.) *cert. denied*, 107 S.Ct. 458 (1986) is also inapplicable here. In that case, involving the Republic-Northwest merger, the ALEA sought to enjoin the enforceability of a transaction agreement in which Northwest, with whom ALEA had no collective bargaining agreement, had agreed to recognize two competing unions. The Court refused to interfere with the contractual agreement.

Finally, as explained by the court below, it is the function of arbitration tribunals, not the courts, to decide the meaning of collective bargaining agreements and to consider appropriate remedies for violations. In aid of the exclusive jurisdiction of these tribunals to resolve these disputes, it is irrefutable that courts can and should preserve the status quo so that arbitration may proceed as required by the RLA. *Brotherhood of Locomotive Engineers v. Missouri-Kansas-Texas R.R.*, 363 U.S. 528 (1960).

II. THE COURT CORRECTLY APPLIED CASES ARISING UNDER THE NATIONAL LABOR RELATIONS ACT.

Courts have consistently recognized that it is appropriate to draw from the federal "common" law developed under the National Labor Relations Act ("NLRA") for guidance in interpreting and applying the Railway Labor Act. As this Court so clearly stated in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 377 (1969):

> To the extent that there exists today any relevant corpus of "national labor policy," it is in the law developed during the more than 30 years of administering our most comprehensive national labor scheme, the National Labor Relations Act. This Act represents the only existing congressional expression as to the permissible bounds of economic combat. It has, moreover, presented problems of federal-state relations analogous to those at bar. The Court has in the past referred to the NLRA for assistance in construing the Railway Labor Act, *see, e.g., Steele v. Louisville & N.R. Co.*, 323 US 192, 200-201, 89 L. Ed. 173, 181, 182, 65 S. Ct. 226 (1944); *Railroad Trainmen v. Toledo, P. & W. R. Co.*, 321 US 50, 61, n. 18, 88 L. Ed. 534, 541, 64 S. Ct. 431, 150 ALR 810 (1944), and we do so again here. Indeed, even if we were to revive the "common law" of labor relations, the common law has always been dynamic and adaptable to changing times, and we would today look to these legislatively based principles for guidance. *Cf. Textile Workers v. Lincoln Mills*, 353 US 448, 456-457, 1 L. Ed. 2d 972, 980, 77 S. Ct. 912 (1957).

394 U.S. at 383.

As one other court has explained, discussions of the National Labor Relations Board and the Courts interpreting and applying the NLRA "offer a cogent analogy in the solution of similar problems arising under the Railway Labor Act and the courts have frequently drawn on the NLRA for guidance" in similar situations presented under the RLA. *Pan American World Airways v. IBT,* 275 F. Supp. 986, 997-98 (S.D. N.Y. 1967).

Thus, the Court below correctly applied cases which have arisen under the NLRA. This is especially true where Petitioners, as they are here, were unable to provide the Court of Appeals with any appellate decisions holding that successorship clauses are unenforceable under the RLA, and where nothing in the statutory language compels a different result.

CONCLUSION

Since the decision of the Ninth Circuit Court of Appeals issued in this matter was not in conflict with the decisions of other courts of appeal or with Federal labor policy as applied by this Court, the petition for a writ of certiorari should be denied. In addition, by virtue of Associate Justice O'Connor's Stay of the Ninth Circuit decision and injunction the operational merger of Delta and Western occurred on April 1, 1987 and Western ceased to exist as a corporate entity. The effect, if any, of this develpment should be determined by the Courts below prior to review by this Court.

Respectfully submitted,

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